

**In the Matter of:**

Docket No. 2012-005  
Conditional Decision and  
Order

The Form A dated September 4, 2012 and the Agreement and Plan of Merger dated August 19, 2012 provided notice of the Applicant's intent to acquire control of Wellpath of South Carolina, Inc. ("Wellpath"), a South Carolina domestic HMO through Coventry Health Care, Inc. a publicly traded Delaware holding company for various insurance companies, health maintenance organizations and related organizations. Coventry currently owns directly all issued and outstanding shares of the Domestic HMO's voting capital stock. Aetna plans to acquire control of the Domestic HMO through the acquisition of 100% of the issued and outstanding capital stock of Coventry, WellPath's

ultimate parent company. Upon and following completion of the Transaction, Aetna will indirectly own and control all the shares of the Domestic HMO's issued and outstanding capital stock. The filing was deemed complete after supplemental documentation was received on or about November 21, 2012.

### **STATUTORY STANDARD OF REVIEW**

S.C. Code Ann. § 38-21-10(2) of the South Carolina Code of Laws creates a presumption of control whenever an acquiring entity would directly or indirectly own ten percent or more of the voting securities of a regulated entity. S.C. Code Ann. § 38-21-60 prohibits any person from acquiring control of a domestic HMO without first having filed information required pursuant to the Insurance Holding Company Regulatory Act and having obtained approval for that acquisition from the Director of Insurance or his designee under S.C. Code Ann. § 38-21-90.

S.C. Code Ann. § 38-21-90 of the Insurance Holding Regulatory Company Act specifically requires the approval of the proposed acquisition of control of a South Carolina domestic HMO unless the Director of Insurance or his designee determines, after a public hearing, that:

- (1) After the change of control the domestic HMO is not able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;
- (2) The effect of the merger or other acquisition of control would substantially lessen competition in insurance in this State or tend to create a monopoly. In applying the competitive standard in this provision:

- (a) The information requirements and standards of Section 38-21-125(C) and (D) apply.
  - (b) The merger or other acquisition must not be approved if the Director or his designee finds that at least one of the situations in Section 38-21-125(D) exists.
  - (c) The Director or his designee may condition the approval of the merger or other acquisition on the removal of the basis of disapproval within a specified period of time.
- (3) The financial condition of the acquiring party might jeopardize the financial stability of the HMO or prejudice the interest of its policyholders.
  - (4) The plans or proposals which the acquiring party has to liquidate the HMO, sell its assets, or consolidate or merge it with a person or to make another material change in its business or corporate structure or management are unfair and unreasonable to the HMO's policyholders and not in the public interest.
  - (5) The competence, experience, and integrity of those persons who would control the operation of the HMO are such that it is not in the interest of policyholders of the HMO and of the public to permit the merger or other acquisition of control.
  - (6) The acquisition is likely to be hazardous or prejudicial to the insurance-buying public.

Therefore, the Applicant must prove by a preponderance of the evidence that those factors do not exist.

### **FINDINGS OF FACT**

Having considered the Form A, the Agreement and Plan of Merger dated August 19, 2012, the financial statements of the Applicant, and other supplemental documentation, I find, by a preponderance of the evidence, the following as to the requested approval of the acquisition of WellPath:

1. A Form A application was filed with the Department on or about September 4, 2012. The application complies with the requirements of S.C. Code Ann. § 38-21-70.

2. WellPath is a South Carolina domestic HMO. It has not transacted insurance business in the state for the past few years.

3. Aetna is a publicly-owned and traded company whose stock is traded on the New York Stock Exchange under the trading symbol AET. Aetna is one of the nation's leading diversified health care benefits companies, serving approximately 36.7 million people with information and resources to help them make better informed decisions about their health care. Aetna offers a broad range of traditional, voluntary and consumer-directed health insurance products and related services, including medical, pharmacy, dental, behavioral health, group life and disability plans, and medical management capabilities, Medicaid health care management services and health information exchange technology services. Aetna's customers include employer groups, individuals, college students, part-time and hourly workers, health plans, health care

providers, governmental units, government-sponsored plans, labor groups and expatriates.

4. In consideration for the Merger, each outstanding share of Coventry's common stock (other than shares held, directly or indirectly, by Coventry or Aetna and other than those shares with respect to which appraisal rights are properly exercised) will be converted into the right to receive (i) 0.3885 shares of Aetna's common stock and (ii) \$27.30 in cash, without interest. Aetna expects to finance the cash portion of the transaction with approximately \$1.2 billion of cash that is projected to be available at Aetna and Coventry at the time of the Merger closing and by issuing approximately \$2.5 billion of new debt and commercial paper. Aetna will also assume all of Coventry's outstanding debt, which totals approximately \$1.6 billion. The total dollar value of the Transaction is approximately \$7.3 billion, based on the closing price of Aetna common shares on August 17, 2012.

5. Based upon the materials submitted by the Applicant, none of the conditions provided for under S.C. Code Ann. § 38-21-90(A) exist or apply with respect to the proposed acquisition.

6. The Applicant has represented that WellPath will continue to comply with all requirements for licensure.

7. The Applicant asserts in the Form A that it has no present plans to liquidate WellPath or to sell its assets to any person. The Form A also states that the Applicant does not have any plans to cause WellPath to merge or consolidate or transfer any of its assets with any other company. Following the consummation of the Transaction, WellPath will maintain its separate corporate existence and will be a wholly-

owned subsidiary of Aetna. No specific material changes in the Board of Directors or senior management or operations of the Domestic HMO are currently planned as part of the Transaction or immediately after the Transaction other than to replace any current Board members or employees who resign following the consummation of the Transaction.

8. The Applicant appears to be financially sound. WellPath has no enrollees and consummation of the Agreement will not jeopardize the financial stability of WellPath. The Applicant has no plans to declare any extraordinary dividends for WellPath.

9. The biographical affidavits provided for the executive officers and directors of the Applicant were included in the Form A. That information indicates that the Applicant's proposed management team has management experience and further indicates that those individuals do not have a history of criminal convictions.

### **CONCLUSIONS OF LAW**

I have considered the statutory requirements for approval of a change of control in accordance with the applicable provisions of the South Carolina Code and make the following conclusions of law:

1. I have jurisdiction over the parties and the subject matter pursuant to the provisions of S.C. Code Ann. §§ 38-21-60, 38-21-70, S.C. Code Ann. Reg. 69-31 and other pertinent provisions of the South Carolina Insurance Code;

2. Upon completion of the proposed acquisition, WellPath will continue to be able to satisfy the requirements for the issuance of a license as required by § 38-21-90 (A) (1).

3. This acquisition will not substantially lessen competition or create a monopoly, which is prohibited by § 38-21-90 (A) (2).

4. The Applicant's financial condition will not jeopardize the financial stability of WellPath or prejudice the interest of its policyholders, pursuant to the provisions of § 38-21-90 (A)(3).

5. The transaction is neither unreasonable for policyholders nor contrary to the public interest, pursuant to the provisions of § 38-21-90(A)(4).

6. The Form A indicates that the Applicant will bring some experience and expertise to the transaction. It also appears that the conditions of § 38-21-90(A)(5) will not occur because the experience and integrity of the persons who would control the operation of WellPath are such that it would be in the interest of WellPath and the public to permit the acquisition.

7. The proposed acquisition is not likely to be hazardous to those buying insurance as prohibited by § 38-21-90(A)(6). Any existing certificates of coverage will continue in force and effect.

### **CONCLUSION**

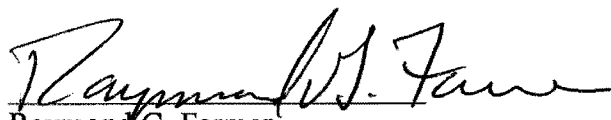
In view of the foregoing findings of fact and conclusions of law, the criteria established under S.C. Code Ann. § 38-21-90 (Supp. 2002) for approval of an acquisition of control or merger of a domestic insurer have been met. Accordingly, it is ordered that the Form A application to acquire direct control of WellPath is APPROVED subject to the following conditions. The Applicant must:

1. Secure the approval of any other state or federal regulatory entities necessary for the transaction of business by making any required state and federal filings; and

2. Comply with all applicable provisions of South Carolina law to maintain the domestic licensure of WellPath.

3. The Form A is considered public information. Attachments and other supplemental documents submitted in the Application and in response to requests of the Department which have been marked "Trade Secret: Confidential and Exempt" shall be provided confidential treatment pursuant to S.C. Code Ann. §§ 38-21-290 and 30-4-40.

IT IS SO ORDERED.

  
Raymond G. Farmer  
Interim Director of Insurance

Columbia, South Carolina  
December 6, 2012